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To: Microsoft ATR
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Subject: Microsoft Settlement

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VIA ELECTRONIC MAIL

Ms. Hesse:

I am writing as my right under the Tunney Act to comment on the proposed settlement between Microsoft and the Department Of Justice.

As a professional technologist and an American taxpayer, I must express my opinion that the proposed settlement is no settlement. For four years my tax money paid for the Department of Justice to prosecute Microsoft, resulting in a verdict of guilty. Yet under the terms of the proposed settlement, Microsoft will not merely not be punished, they will actually be encouraged in their monopolistic behavior. To name some specifics:

API DISCLOSURE: The current proposed settlement would allow Microsoft to continue shutting out its competitors through arbitrary and secret changes to the Application Programming Interfaces (APIs) of their products. While the settlement claims to address this issue, in fact, it allows Microsoft to continue their monopolistic practices. In particular:

Section III(J)(2): This section specifically says that Microsoft only needs to disclose its APIs to entities that meet Microsoft's criteria as profitable businesses. This section would allow Microsoft to arbitrarily deny access to APIs to anyone they didn't like, particularly Open Source not-for-profits.

For example, I currently run SAMBA servers for 3 non-profit organizations in order allow their Windows computers to interact with the their inexpensive Linux file servers. Under the proposed settlement, Microsoft could deny the SAMBA Project, a not-for-profit entity, any access to its APIs. This would force the non-profits who depend on me to purchase expensive Microsoft server software they cannot afford.

Section III(D): Microsoft is also allowed to deny disclosure of APIs that might compromise security. This criteria gives Microsoft a pretext for denying access to any Middleware API in a competitive market for

"security reasons," and to keep that API secret to themselves. All APIs have a security aspect if viewed in a particular way, and you may be sure that Microsoft will view them that way.

My proposal for this issue is that Microsoft be required to publish all of its APIs for free to the World Wide Web, without licensing or "click-through" agreements. Microsoft should be required to maintain these public API documents as long as any of the related products are sold in the United States, and be required to respond to reports of inaccuracy.

Numerous Open Source software projects, such as Apache and OpenOffice.org, have put their APIs into the public domain and this has made that software better, more secure, and more popular. Microsoft has no justification for denying this suggestion except to continue its illegal monopoly practices.

THE \$1 BILLION GIVEAWAY: Microsoft proposes that, to remedy the states' claims of consumer harm, they will give away \$1 billion worth of hardware and software to American public schools. This is not a concession from Microsoft, it is part of their sales strategy. Apple and Open Source technology currently dominate the educational market, and Microsoft's share of this market is shrinking due to the high price of Microsoft's products.

If permitted, this "giveaway" would trick many desperate schools into accepting Microsoft software because it is "free." Microsoft would not, however, continue to support this software and hardware for free in perpetuity, and schools would soon find themselves in debt to Microsoft in order to maintain the software and hardware they were given under the settlement. Additionally, learning Windows in school to the exclusion of other operating systems will cause our children to grow up unaware that there are alternatives to Microsoft, thus preserving Microsoft's illegal monopoly into another generation.

To be blunt, Ms. Hesse, this portion of the settlement talks is tantamount to allowing Microsoft to become a heroin dealer to our schools. Drug dealers, as you know, often give the first one for free.

Instead, I propose that Microsoft be asked to give away 2 billion dollars in cash to an independent foundation administered by representatives of Microsoft's competitors (such as Sun and Red Hat) and the Department of Education, and not by Microsoft or their business partners. This foundation would be directed to give the money to any school to purchase the computers and software they want, or even purchase books and hire computer teachers and network engineers, with a mandate for the foundation to distribute 100% of the money within 2 years.

I hope that my comments help the Department of Justice come up with a better settlement, one that truly prevents Microsoft from repeating

their illegal monopolistic practices.

-Josh Berkus

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